

IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 1535/Mum/2019  
(A.Y: 2006-07)

Deepak Jain 202, EMP 54, Evershine Millanium Paradize, Thakur Vill, Kandivali (E) Mumbai – 400101	Vs.	ITO – 33(1)(4) (Formerly assessed by ITO 25(3)(2), R No. 708, 7 <sup>th</sup> Floor, C- 12, Pratyakshakar Bhavan BKC, Bandra- Mumbai – 400051.
PAN/GIR No. : AACPJ1817E		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Smt.Mahita Nair.DR

Date of Hearing	04.08.2022
Date of Pronouncement	08.08.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals) – 45, Mumbai passed u/s 271(1)(c) and 250. The assessee has raised the following grounds of appeal:

- 1. The Ld. CIT (Appeals) erred in upholding the action of AO in treating the Appellant to be in default u/s 271(1)(c) of the Act and consequently erred in confirming penalty levied of Rs. 2,57,476/*

1.1 *In doing so the Ld. CIT (Appeals) did not afford any opportunity let alone reasonable opportunity.*

1.2 *The Ld. CIT (Appeals) erred in holding that appellant's authorised representative was present before him and ignored the material on his record relating to hearing which took place subsequent to the filing of written submissions namely application from admission of additional evidence vide letter dt. 07-03-2016, AO's remand report dt 24-05-2016 appellant's comment on the remand report and hearing which took place on 04-10-2016 before the Hon. CIT (Appeals) Mr. Dhamija.*

1.3 *The Ld. CIT (Appeals) erred in observing ". the very fact of non representation by the assessee before the tribunal shows the weakness of the case of the assessee on the path of truth".*

2. *The order laying penalty and confirmed by CIT (Appeals) is illegal and void and, therefore, bad in law as the limb of section 271(1)(c) under which the appellant was considered to be in default is not stated in the show cause notice u/s 274 r.w. s. section 271 of the Act dt. 29-12-2008 and the same shows lack of application of mind by the AO.*

*Your appellant, therefore, submits that the order levying penalty be quashed or in the alternative suitable relief be allowed.*

2. On perusal of the facts, the appeal was filed by the assessee on 14-03-2019 and the case was posted for hearing on 27-10-2020, 22-11-2021, 04-01-2022, 04-04-2022, 30-05-2022, 07-07-2022, and today i.e

04.08.2022, none appeared on dates of hearing nor any application was filed for adjournment. On considering the facts and the action of the assessee in non appearance on dates of hearing. The presumption is that after filling the appeal, the assessee is not inclined/interested to prosecute the appeal. Accordingly, we heard the Ld. DR submissions and considered the material information available on record.

3. The brief facts of the case that the assessee is an individual and derives income from salary, house property and other sources including commission from LIC. The assessee has filed the return of income for the A.Y 2006-07 on 25.07.2006 disclosing a total income of Rs.3,06,398/-. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act was issued. The Assessing Officer(A.O) on perusal of the financial statements filed in support of return of income found that the assessee has disclosed certain liabilities from various banks with respect to the investments. The AO has dealt on the facts related to the transactions and credits in the bank account. The A.O was not satisfied with the submissions as the

assessee could not reconcile the bank credits and also the assessee has incurred the expenditure for purchase of property and was not disclosed. Finally, the A.O has made an addition of unexplained cash credits in the bank account u/s 68 of the Act and unexplained investments U/sec 69C of the Act and assessed the total income of Rs.88,86,244/- and passed the order u/s 143(3) of the Act on 29.12.2008.

4. Subsequently, the A.O. has initiated penalty proceedings u/s 271(1)(c) of the Act. The assessee has submitted that against the quantum addition, the assessee has filed the appeal with the CIT(A) and the appellate authority has dealt on facts, additional evidence, remand report and provisions of the Law and restricted the addition to the extent of Rs.7,64,935/-. The A.O. considering these factual aspects has called for the explanations in the penalty proceedings and the assessee has filed the detail explanations on 5-03-2013 referred at para3 of the penalty order. But the A.O. was not satisfied with the explanations and levied a penalty of Rs.2,57,476/- and passed the order u/s 271(1)(c) of the Act dated 28-03-2013.

5. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A). The CIT(A) considered the grounds of appeal and the submissions of the assessee but the confirmed the action of the A.O in levy of penalty and dismissed the appeal. Aggrieved by the order of CIT(A), the assessee has filed an appeal with the Hon'ble Tribunal. At the time of hearing none appeared on behalf of the assessee and the Ld.DR relied on the order of the CIT(A).

6. We heard the Ld. DR submissions and perused the material on record. The assessee has challenged in the grounds of appeal that the CIT(A) has over looked the confirmations obtained by the assessee after quantum appeal was disposed off. Further the CIT(A) has called for the remand report of the A.O. in the penalty proceedings and the assessee has filed the written submissions and no proper opportunity was allowed to explain the reasonable cause in the penalty proceedings. We considered the overall facts, submissions and material on record are of the opinion that the disputed issue of penalty has to be relook based on the additional evidence filed by the assessee in the hearing proceedings and the assessee should be

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granted a reasonable opportunity of hearing to explain the cause and the CIT(A) should pass a speaking order. We considering the principles of natural justice shall provide one more opportunity to the assessee to explain before the CIT(A) and we set aside the order of the CIT(A) and restore the disputed issue of penalty to the file of the CIT(A) to adjudicate a fresh on merits. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information in disposal of appeal. Accordingly, the grounds of appeal of the assessee are allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 08.08.2022.

Sd/-  
(AMARJIT SINGH)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 08.08.2022

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.

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*Deepak Jain, Mumbai.*

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3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

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**आदेशानुसार/** BY ORDER,

( Asst. Registrar)  
ITAT, Mumbai